



COUNTY OF MADISON, VIRGINIA

REQUEST FOR COMMERCIAL REAL ESTATE SERVICES PROPOSALS

Issue Date: February 27, 2019

Pre-proposal Conference: March 25, 2019, 3:00 PM
1120 Old Blue Ridge Turnpike; Criglersville, Virginia

Due Date and Time: **April 1, 2019 at 2:00 PM**
302 Thrift Road; Madison, VA 22727

Anticipated Award Decision Date: April 12, 2019

RFP #: 190227

Issuing Agency: Madison County Administrator's Office
302 Thrift Road
P.O. Box 705
Madison, VA 22727

Procurement Contact: Jack Hobbs, County Administrator
Phone: 540-948-7500
E-mail: JHobbs@madisonco.virginia.gov

REQUEST FOR COMMERCIAL REAL ESTATE SERVICES PROPOSALS

Madison County requests proposals from qualified firms specializing in the sale of commercial real estate for services that will result in the disposal of the surplus Criglersville Elementary School site at 1120 Old Blue Ridge Turnpike (TM# 21-61) in Criglersville, Virginia per the procurement documents available at <https://www.madisonco.virginia.gov/rfps>. It is the intent of this RFP for the successful broker/firm enter into a Professional Services Contract with the County to supply real estate services as outlined therein.

All proposals are to be delivered in hard copy and digital format per those documents to 302 Thrift Road, Madison, VA 22727 no later than 2:00 PM on April 1, 2019. The procurement of these services shall utilize competitive negotiation.

A. SCOPE OF SERVICES

The selected Broker or Real Estate Agent (Agent) will evaluate, provide support and consultation and assist Madison County (County) in the sale of real estate property at known as the former Criglersville Elementary School site at 1120 Old Blue Ridge Turnpike (TM# 21-61) in Madison County.

The County's information on this site can be accessed on line at:

<https://www.madisonco.virginia.gov/countyadministration/page/criglersville-school-real-estate-sale-rfp-issued-181029> and

https://www.dropbox.com/sh/3setn4ra3mi0p2s/AADDI96o2u25BVQY-6tBh6aCa/Background%20Documents?dl=0&subfolder_nav_tracking=1.

The Agent shall work under the supervision of County's single designated representative.

The successful Agent shall agree to contract with the County for the following services:

- Evaluate and make recommendations for improvements to maximize the sales price of property at minimum cost and a sale at the earliest.
- Provide information such as statistics, market analysis, pricing and valuations, financial evaluations.
- Determine a course of action to sell the property.
- Provide timeline for the sale process once the decision is made to sell the property.
- Market and sell identified real estate property owned by the County.
- Communicate, advise and negotiate with Purchasers, Developers, or Investors, in the real estate transactions on behalf of the County.
- The Agent must be a member of local Multiple Listings Services (MLS).
Typical duties required to assist the County may include and not be limited to the following:
 - Provide advice on pricing of properties for sale;
 - Provide advertising at Agent's expense and properties media appropriate for marketing such properties. In some instances additional advertising may be paid by the County upon prior written approval of the County.

B. AGENT'S QUALIFICATIONS

Respondents to this RFP shall have the following qualifications:

- Must be properly licensed to provide the services offered by the Commonwealth of Virginia.
- Must have an excellent reputation in the Madison County real estate community.
- Must be knowledgeable in the local real estate market and have experience with comparable commercial properties.
- Must be knowledgeable in the use of all public real estate records.

C. INSURANCE REQUIREMENTS

For proposal purposes, proposers must submit copies of certificates of insurance for general liability and workers compensation. The successful contractor must provide original certificates naming Madison County as an additional insured prior to commencing services.

D. FEE SCHEDULE

The proposed fee schedule shall include the commission rate or alternative fee structure for the selling of properties.

E. TERM OF CONTRACT

The contract period for the successful Agent is anticipated to be from date of award until either party chooses to discontinue the contract. The contract may be terminated by either party with 30 (thirty) days prior notice.

F. EVALUATION AND AWARD PROCESS

Issuance of this RFP and receipt of proposals does not commit the County to award a contract. The County reserves the right to postpone receipt date, accepting or rejecting any or all proposals received in response to this RFP, or to negotiate with any of the proposers submitting an RFP, or to cancel all or part of this RFP.

G. ORAL PRESENTATION/INTERVIEWS

Firms submitting a proposal in response to this RFP may be required to give an oral presentation of their proposal. Additional technical and/or cost information may be requested for clarification purposes, but in no way will change the original proposal submitted. Interviews are optional and may or may not be conducted.

H. SELECTION CRITERIA

1. Knowledge of local real estate market and Madison County.
2. Global reach for marketing the property.
3. Commercial and Residential real estate experience, qualifications and references.
4. Proven commercial and residential real estate track record.
5. Ability of the contractor(s) to meet or exceed the requirements defined in the RFP.
6. Local reputation.
7. Ability to provide strategies on the best sale options as to repairing items or selling properties "AS IS".
8. Fee schedule
9. Completeness of response to RFP as outlined in this solicitation.

I. RFP SUBMITTAL REQUIREMENTS

By submitting a proposal, proposer represents that it has:

1. Thoroughly examined and become familiar with the scope of services outlined in this RFP and
2. Is capable of performing quality work to achieve the County's objectives.

The following information is to accompany any proposal submitted:

1. List years in business, previous names of the firm, if any.
2. Description of your firm including size of firm, location, number and nature of the professional staff to be assigned to the County; staff experience and training, including a brief resume for each key person listed. If the firm is a unit of a larger company, list similar information for the local office.
3. Describe experience (minimum five years previous experience with proven effectiveness) your firm or organization has in pertinent real estate experience.
4. Experience in assisting similar size entities, including any and all services for government agencies.
5. List of at least three references where and when your firm provided similar services. Provide names, company names, direct telephone numbers and email addresses of contact of specific persons for each reference.
6. Listing of additional services provided by the firm.
7. Listing of current litigation, outstanding judgments and liens.
8. A copy of current licenses for all individuals that would be assigned to the project.
9. A complete copy of specimen contract(s) requiring County signatures prior to the sale.
10. A listing of all disclosures, paperwork, meeting needs and any other item that would involve County time or financial resources prior to the sale.
11. Fee schedule: Clearly articulate the fee structure for listing and selling of properties. State any other costs the County may anticipate relating to the real estate services to be provided. Proposer's fee must be inclusive of all services required as outlined in the Scope of Work herein.

A Schedule of reimbursable expenses that are to be paid directly by the County is to be included as a part of the proposed fee schedule. Proposers should consider alternate service levels and associated costs with their proposal responses that they would deem appropriate.

J. COVER LETTER

Proposer shall provide a letter of transmittal indicating the submission of a formal response and short introduction and summary for the County's sole point of contact with the firm:

- Name
- Mailing and physical address;
- Phone numbers, fax numbers, e-mail/ addresses;
- How the point of contact has been an active broker or real estate agent.

K. SALES APPROACH

1. Prepare a detailed Presented Approach to the Scope of Work, which specifically describes the methodology to be used for Real Estate Services. This section should confirm Proposer's understanding of the RFP. Proposer should clearly outline the recommended approach of the organization in meeting the responsibilities and requirements of each of the services and activities that the County has outlined in the Scope of Work herein.
2. Proposer shall clearly distinguish tasks that Proposer will undertake as distinguished from those which are the responsibility of the County. Absence of this distinction shall mean Proposer is fully assuming responsibility for all tasks.

L. GENERAL CONDITIONS AND INSTRUCTIONS TO VENDORS

(Revised 2/4/19)

These general rules and conditions shall apply to all purchases and be a part of each solicitation and every contract awarded by the Madison County Purchasing Agent unless otherwise specified. The Madison County Purchasing Agent is responsible for the purchasing activity of Madison County. The term "Owner" as used herein refers to the contracting entity which is the signatory on the contracts for Madison County, a political subdivision of the Commonwealth of Virginia. Vendor or his Contractor authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the Vendor's Contractor's own risk and except as provided by law, relief cannot be secured on the plea of error. Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation, bids/proposals on all solicitations issued by the Purchasing Agent will bind Contractor to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

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1. **AUTHORITY:** According to the Purchasing Policy, the Madison County purchasing system shall operate under the direction and supervision of the County Administrator, who shall be the Purchasing Agent for the County. In the discharge of these responsibilities, the Purchasing Agent may delegate the administrative purchasing responsibility to a responsible subordinate. Unless specifically delegated by the Purchasing Agent, no other Owner officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the Owner for indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the Owner shall not be bound thereby. As such, the Purchasing Agent shall have all authority, rights and privileges as the listed procurement contact.

2. **COMPETITION INTENDED:** It is the Owner's intent that this solicitation permit competition. It shall be the Contractor's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Agent must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

CONDITIONS OF BIDDING

3. **CLARIFICATION OF TERMS** - If any Contractor has questions about the specifications or other solicitation documents, the prospective Contractor should contact the individual whose name appears on the face of the solicitation no later than seven (7) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the procurement contact. Notifications regarding specifications may not be considered if received in less than seven (7) business days of the date set for opening of bids/receipt of proposals.
4. **MANDATORY USE OF OWNER FORM AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official Owner form provided for that purpose shall be a cause for rejection of the bid/proposal. Unauthorized modification of or additions to any portion of the Invitation to Bid or Request for Proposal may be cause for rejection of the bid/proposal. However, the Owner reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject any bid or proposal which has been modified.
5. **LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/PROPOSALS:** Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/modification. The Owner is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Contractor to ensure their bid/proposal reaches Procurement by the designated date and hour.
 - a. The official time used in the receipt of bids/ proposals is that time on the clock in the office where the bids are to be submitted.
 - b. Late bids/proposals/modifications will be returned to the Contractor UNOPENED, if solicitation number, acceptance date and Contractor's return address is shown on the container.
 - c. If the Owner closes its offices due to inclement weather scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
6. **IDENTIFICATION OF PROPRIETARY INFORMATION:** Trade secrets or proprietary information submitted in a proposal shall not be subject to disclosure under the Virginia Freedom of Information Act. However, in order for this information to be protected from disclosure, the Contractor must specifically invoke the protections of Sec. 2.2-4342, Code of Virginia, 1950, as amended, or other applicable statute, prior to or upon submission of the trade secrets or proprietary information. The Contractor must clearly identify any part of its proposal considered to be protected as trade secret or as proprietary information, and must state the reasons why protection is necessary.
 - a. Any Contractor shall identify a trade secret or proprietary information by clearly stating "Trade Secret" or "Proprietary Information" adjacent to the particular information, and by clearly identifying the information to be subject to the protection, such as by encircling, highlighting, underlining or other similar means. The Contractor shall state the reasons why protection is necessary on a separate page of the proposal.

- b. Any Contractor shall not identify as a trade secret or proprietary information those sections of the proposal that are material to Madison County's ultimate award of the contract.
- c. The County reserves the right to contact a Contractor and to request that the Contractor explain or clarify why the Contractor identified certain information as a trade secret or as proprietary information.
- d. Any Contractor shall not identify as trade secret or proprietary information their complete proposal.

7. WITHDRAWAL OF BIDS/PROPOSALS:

- a. Contractor for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:
 - i. Bids/Proposals may be withdrawn on written request from the Contractor received at the address shown in the solicitation prior to the time of acceptance.
- b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the procurement contact, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the Owner may exercise its right of collection.
- c. No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Bid/Proposal of the same Contractor or of another Contractor in which the ownership of the withdrawing Contractor is more than five percent. In the case of Invitation for Bid's, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No Contractor who is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

- 8. ERRORS IN BIDS/PROPOSALS:** When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initialed by the Contractor. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Contractor. Bidders/Contractors are cautioned to recheck their bids/proposals for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

- 9. IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

- **ADDRESSED TO THE PURCHASING AGENT**
- **IFB/RFP NUMBER**
- **TITLE**
- **BID/PROPOSAL DUE DATE AND TIME**

If a bid/proposal is not addressed with the information as shown above, the Contractor takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- 10. ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the bid/proposal may be withdrawn at the written request of the Contractor. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

- 11. CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part.

- 12. BIDDERS PRESENT:** At the time fixed for the opening of responses to a bid, bid contents will be made public for the information of bidders and other interested parties who may be present either in person or by representative. All bids will be opened at the time and place specified and read publicly. Bid tabulations are posted on Public Bulletin Board for a minimum of 10 days from award date. At the time fixed for the receipt of responses for Request for Proposals, only the names of the Contractors will be read and made available to the public.

- 13. RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the Owner's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the Owner's Bidder's List.

- 14. BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work,

materials or supplies.

15. **TAX EXEMPTION:** The Owner is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Contractor.
16. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Contractors certify that they are not currently debarred from submitting bids/proposals on contracts by Madison County, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by Madison County or any agency, public entity/locality or authority of the Commonwealth of Virginia.
17. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by the Owner. By submitting their bids/proposals, all Bidders/Contractors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Contractor, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
18. **NO CONTACT POLICY:** No Contractor shall initiate or otherwise have contact related to the solicitation with any Owner representative or employee, other than the procurement contact, after the date and time established for receipt of bids/proposals. Any contact initiated by a Contractor with any Owner representative, other than the procurement contact, concerning this solicitation is prohibited and may cause the disqualification of the Contractor from this procurement process.

SPECIFICATIONS

19. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the Owner in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Owner to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.
20. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
21. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. The Contractor shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.
22. **CONDITION OF ITEMS:** Unless otherwise specified in the solicitation, all items shall be new, in first class condition.

AWARD

23. **AWARD OR REJECTION OF BIDS:** The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the Owner to accept it. Awards made in response to a RFP will be made to the highest qualified Contractor whose proposal is determined, in writing, to be the most advantageous to the Owner taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the Owner. Award may be made to as many Bidders/Contractors as deemed necessary to fulfill the anticipated requirements of the Owner. The Purchasing Agent also reserves the right to reject the bid if a bidder is deemed to be a non-responsive bidder. All awards are subject to appropriation by the Madison County Board of Supervisors.
24. **ANNOUNCEMENT OF AWARD:** Upon the award or announcement of the decision to award a contract as a result of this solicitation, the Purchasing Agent will post a notice on the County web site.
25. **QUALIFICATIONS OF BIDDERS OR CONTRACTORS:** The Owner may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the work/furnish the item(s) and the Contractor shall furnish to the Owner all such information and data for this purpose as may be requested. The Owner reserves the right to inspect Contractor's physical facilities prior to award to satisfy questions regarding the Contractor Contractor's capabilities. The Owner further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Contractor fails to satisfy the Owner that

such Contractor is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

26. **NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER:** Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds.
27. **TIE BIDS:** In the case of a tie bid, the Owner may give preference to goods, services and construction produced in Madison County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to the Code of Virginia. If no Owner or Commonwealth choice is available, the tie shall be decided by lot.

CONTRACT PROVISIONS

28. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court of Madison County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.
29. **VIRGINIA STATE CORPORATION COMMISSION:** If required by law, the Contractor shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Section 13.1 or Title 50 of the Code of Virginia, during the term of the Contract or any Contract renewal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the terms of the contract. If the Contractor fails to remain in compliance with the provisions of this section, the contract may become void.
30. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bids, Bidders certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
31. **ANTI-TRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Owner all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and Madison County, relating to the particular goods or services purchased or acquired by the Owner under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for Anti-Trust violations.
32. **PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made thirty (30) days after receipt of a proper invoice, or thirty (30) days after receipt of all goods or acceptance of work, whichever is the latter.
- a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the department responsible for initiating the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.
33. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated:
- a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Owner for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - b. To notify the Owner and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Owner, except for amounts withheld as stated in 2 above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Owner.
34. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Agent.
35. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Owner, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchases and administrative costs. This remedy shall be in addition to and other remedies which the Owner may have.
36. **ANTI-DISCRIMINATION:** By submitting their bids/proposals, Bidders/Contractors certify to the Owner that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and those applicable Sections of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public

funds shall be subject to audit by the public body.

37. In every contract over \$10,000 the provisions in A and B below shall apply:
- a. During the performance of this contract, the Contractor agrees as follows:
 - i. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - ii. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
 - b. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
38. **INVOICES:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the department address requesting the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number and must have the department head's approval.
39. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
- a. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - b. The Owner may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Owner a credit for any savings. Said compensation shall be determined by one of the following methods.
 - i. By mutual agreement between the parties in writing; or
 - ii. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Owner's right to audit the Contractor's records and/or determine the correct number of units independently; or
 - iii. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Owner with all vouchers and records of expenses incurred and savings realized. The Owner shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to Procurement within thirty (30) days from the date of receipt of the written order from Procurement. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Owner or with the performance of the contract generally.
 - c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater without the advanced written approval of the Board of Supervisors as applicable.
40. **INDEMNIFICATION:** Contractor shall indemnify, keep and save harmless the Owner, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the Owner in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the Owner in any such action, the Contractor shall, at his or her own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Owner as herein provided.
41. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor

in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

42. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the Owner upon thirty (30) days advance written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
 - a. Termination for Convenience: In the event that the contract is terminated upon request and for the convenience of the Owner, without the required thirty (30) days advance notice, then the Owner shall be responsible for payment of services up to the termination date.
 - b. Termination for Cause: Termination by the Owner for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to paragraph 32 of these General Conditions, the Owner may hold the contractor responsible for any resulting additional purchase and administrative costs. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.
 - c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled as of the first day of that subsequent fiscal year.
43. **VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
 - a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of bids but prior to award, except in the event that the Owner decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation Contractor, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the Owner decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a Bidder, Contractor or Contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Bidder, Contractor or Contractor must invoke the protections of that section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
 - d. Nothing contained in this section shall be construed to require the Owner, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of reasons why a particular proposal was not deemed to be the most advantageous to the Owner.
44. **USE OF CONTRACT BY OTHER POLITICAL JURISDICTIONS:** Bidders are advised that all resultant contracts will be extended, with the authorization of the Bidder, to Northern Virginia Metropolitan Washington Council of Governments jurisdictions and other jurisdictions and Political Subdivisions of the Commonwealth of Virginia to permit their ordering of supplies and/or services at the prices and terms of the resulting contract. If any other jurisdiction decides to use the final contract, the Contractor must deal directly with that jurisdiction or political subdivision concerning the placement or orders, issuance of the purchase order, contractual disputes, invoicing and payment. Owner acts only as the "Contracting Agent" for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on consideration of your bid/proposal.
 - a. It is the awarded vendor's responsibility to notify the jurisdictions and political subdivision of the availability of the contract.
 - b. Each participating jurisdiction and political subdivision has the option of executing a separate contract with the awardee. Contracts entered into with them may contain general terms and conditions unique to those jurisdictions and political subdivisions covering minority participation, non-discrimination. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
 - c. Owner shall not be held liable for any costs or damage incurred by another jurisdiction as a result of any award extended to that jurisdiction or political subdivision by the awardee.
45. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five years after final payment, or until audited by the Owner, whichever is sooner. The agency, its authorized agents, and/or Owner auditors shall have full access to and the right to examine any of said materials during said period.
46. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by Article 3.1-250 of the Code of Virginia (1950), as amended, or Article 1261 of Title 15 of the United States Code, then the Bidder, by submitting his bid, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the forgoing sections and that by delivering the items or products the Bidder does not violate any of the prohibitions of Article 3.1-252 of the Code of Virginia or Title 15 U.S.C., Article 1263.
47. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with the bid for each chemical and/or contract offered. Failure on the part of the Bidder to submit such data sheet may be cause for declaring the bid as non-responsive.

48. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Agent. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the Purchasing Agent the names, qualifications and experience of their proposed subcontractors. Notwithstanding any approval by the Owner permitting subcontracting the Contractor shall, however, remain fully liable and responsible for the work to be done by his subcontractor(s) and shall assure compliance with all requirements of the contract.
49. **PROTECTION OF PERSON AND PROPERTY:** The Contractor expressly undertakes both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the contractor's operation in connection with the work.
- The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
 - The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this contract.
 - The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the owner's property from injury or loss arising in connection with this contract. He shall make good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. He shall provide and maintain all passageways, guard fences, lights and other facilities for the protection required by public authority, local conditions, any of the contract documents or erected for the fulfillment of his obligations for the protection of person and property.
 - In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the contractor, without special instruction or authorization from the Owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the Owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by paragraph 35, of the General Terms and Conditions.
50. **WORK SITE DAMAGES:** Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's expense.

DELIVERY PROVISION

51. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 a.m. – 2:30 p.m. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.
52. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the Owner may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
53. **INSPECTIONS:** The Owner reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the Owner will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount of fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Owner for such materials or supplies as are not in accordance with the specifications.
54. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the procurement contact when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the procurement contact, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the Owner, there shall be added to the time of completion a time equal to the period of such delay caused by the Owner. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.
55. **POINT OF DESTINATION:** All materials shipped to the Owner must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.
56. **REPLACEMENT:** Materials or components that have been rejected by the procurement contact, in accordance with the terms of

the contract, shall be replaced by the Contractor at no cost to the Owner.

57. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:
- a. Purchase Order Number,
 - b. Name of Article and Stock Number,
 - c. Quantity Ordered,
 - d. Quantity Shipped,
 - e. Quantity Back Ordered,
 - f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BIDDER/CONTRACTOR REMEDIES

58. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Contractor who desires to protest the award or decision to award a contract, by Owner, shall submit such protest in writing to the Owner (if the award or decision to award was made by Madison County (if the award or decision to award was made by Madison County)), no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected Contractor is not a responsible Contractor. The written protest shall include the basis for the protest and the relief sought. The Owner shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the Contractor appeals within ten (10) days of the written decision by instituting legal action. Nothing in this paragraph shall be construed to permit a Contractor to challenge the validity of the terms or conditions of the solicitation.
59. **DISPUTES:** Contractual claims, whether for money or other relief, shall be submitted in writing to the Owner (if the claim is against Madison County) no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the Work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amount agreed due in the final payment. A written decision upon any such claims will be made by the Board of Supervisors (if the claim is against Madison County Government) within sixty (60) days after submittal of the claim. The Contractor may not institute legal action prior to receipt of Board of Supervisor's (whichever is applicable) decision on the claim unless the applicable party fails to render such decision within sixty (60) days. The decision of the Board of Supervisor's (as applicable) shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in Section 2.2-4364 of the Code of Virginia. Failure of the Board of Supervisors to render a decision within sixty (60) days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. Should the Board of Supervisors (as applicable) fail to render a decision within sixty (60) days after submittal of the claim, the Contractor may institute legal action within six (6) months after such 60-day period shall have expired, or the claim shall be deemed finally resolved. No administrative appeals procedure pursuant to Section 2.2-4365 of the Code of Virginia has been established for contractual claims under this contract.